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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.23 OF 2017

Gopal Vasant Khandare
and anr

... Petitioners

V/s.

Mrs. Radha Vasant Khandare
and ors

... Respondents

Mr. I.M. Khairadi, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioners.
- 2] By this petition filed under Section 115 of Code of Civil Procedure, the petitioners are challenging the order dated 12.7.2016, passed by 3rd Joint Civil Judge Junior Division, Vashi, Navi Mumbai, in R.C.S. No.143 of 2014.
- 3] By the impugned order, the trial Court has held that the valuation of the suit claim is proper, suit is not barred by limitation and Civil Court is having jurisdiction to try and entertain the suit.
- 4] Needless to state that the issue of limitation being a mixed question of law and facts, it can be decided finally on the basis of evidence which will be led before the trial Court, at the time of trial

and having regard to the reasoning recorded by trial Court tentatively, that issue will remain open for both parties to argue and agitate at the time of final hearing of the suit. Hence no interference is warranted in the impugned order of the trial Court on that score.

5] As regards the valuation of the suit claim, trial Court has in paragraph 9 of its order, rightly held that the suit is simplicitor for declaration that the will is null and void and not binding on the plaintiff. However, no relief of possession as such is sought. In such situation, the valuation made under Section 6(iv)(j) of the Maharashtra Court Fees Act, cannot be also called as illegal so as to warrant interference in the finding on that aspect. The issue of jurisdiction of the Court is also not decided finally and it is held that all these are still to be agitated at the time of final hearing of the suit on the basis of evidence that may be led before trial Court.

6] In view thereof, no reason is pointed to interfere in the impugned order passed by the trial Court. As such, the order cannot be called as without jurisdiction and hence Revision Application stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]